

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

BRENT KNUDSON,)	
Plaintiff,)	
)	Civil Action No. 2:07-cv-00608
v.)	
)	
WACHOVIA BANK, a National banking entity,)	
TRANS UNION, LLC, a foreign limited liability)	
company, EXPERIAN INFORMATION)	
SOLUTIONS, INC., a foreign corporation, and)	
EQUIFAX INFORMATION SERVICES, LLC, a)	
foreign limited liability company,)	
)	
Defendants.)	

**PLAINTIFF’S RESPONSE TO DEFENDANT WACHOVIA BANK’S REPLY TO
PLAINTIFF’S RESPONSE IN OPPOSITION TO
WACHOVIA’S MOTION TO DISMISS**

COMES NOW Plaintiff, by and through his undersigned counsel, and hereby submits this Brief in Support of Plaintiff’s Opposition to Wachovia’s Motion to Dismiss and states as follows:

Based on the allegations contained in Plaintiff’s Complaint, Defendant Wachovia is not shielded from liability because of qualified immunity under the Fair Credit Reporting Act (FCRA). *See* Complaint, ¶¶ 16, 17, 18 and 19. The FCRA states that any action or proceeding “in the nature of defamation, invasion of privacy, or negligence” is preempted, *unless* the “false information [was] furnished with malice *or willful intent to injure* [the] consumer.” 15 U.S.C. § 1681h(e) (emphasis supplied). In *McCloud v., Homeside Lending*, the district court for the Northern District of Alabama had the opportunity to interpret this provision of the FCRA and held that the plaintiff’s state law claims for defamation and invasion of privacy were not

preempted by the FCRA. 309 F. Supp. 2d 1335, 1341 (N.D. Ala. 2005).

Plaintiff's Complaint states that Defendants, which includes Defendant Wachovia, "continue to report the account as being currently delinquent and over 30 days past due even though Plaintiff closed the account." *See* Complaint ¶ 16. In addition, Plaintiff's Complaint states that Plaintiff "filed multiple disputes regarding [her] account with Wachovia", "Wachovia refused Plaintiff's request to correct Wachovia's error" and "failed its duty to accurately report Plaintiff's account information." *See* Complaint ¶¶ 17, 18, and 19. These allegations are sufficient to support a claim under the FCRA based on Defendant Wachovia's malicious, intentional and / or willful violations.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that this Court deny Wachovia's Motion to Dismiss since Plaintiff has stated a valid claim against Wachovia under the FCRA.

Dated this 4th day of September, 2007.

s/ Andy Nelms
Keith Anderson Nelms (NEL022)
Attorney for Plaintiff
ASB-6972-E63K
847 So. McDonough Street, Ste 100
Montgomery, AL 36104
(334) 263-7733 Telephone
(334) 832-4390 Fax
Email: andynelms@jaylewislaw.com

OF COUNSEL:
LAW OFFICES OF JAY LEWIS, LLC
847 So. McDonough Street, Suite 100
Montgomery, AL 36104
Telephone: (334) 263-7733
Fax: (334) 832-4390

CERTIFICATE OF SERVICE

_____I hereby certify that on the 4th day of September, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Janine L. Smith
BURR & FORMAN LLP
3400 Wachovia Tower
420 North 20th Street
Birmingham, AL 35203

s/ Andy Nelms

Keith Anderson Nelms
Attorney for Plaintiff
ASB-6972-E63K
847 So. McDonough Street, Ste 100
Montgomery, AL 36104
(334) 263-7733 Telephone
(334) 832-4390 Fax
Email: andynelms@jaylewislaw.com